No. 89-1620

In the Supreme Court of the United States

OCTOBER TERM, 1990

INDEPENDENT INSURANCE AGENTS OF AMERICA, INC., ET AL., PETITIONERS

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Board of Governors of the Federal Reserve System properly concluded that Section 4 of the Bank Holding Company Act of 1956, 12 U.S.C. 1843, does not restrict bank subsidiaries of a bank holding company from selling insurance as authorized by state law.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 890 F.2d 1275. The order of the Board of Governors of the Federal Reserve System (Pet. App. 22a-45a) is reported at 75 Fed. Res. Bull. 388.

JURISDICTION

The judgment of the court of appeals was entered on November 29, 1989. A petition for rehearing was denied on January 18, 1990. Pet. App. 46a. The petition for a writ of certiorari was filed on April 18, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*, the Board of Governors of the Federal Reserve System regulates the acquisition of state and national banks by bank holding companies, *i.e.*, any company that has direct or indirect control of any bank, 12 U.S.C. 1841(a). Section 4 of the Act, 12 U.S.C 1843, imposes certain ownership and operational restrictions on bank holding companies. With respect to ownership restrictions, Section 4(a)(1) and (2) of the Act, 12 U.S.C. 1843(a)(1) and (2), provides that no bank holding company shall directly or indirectly acquire or retain control of "any company which is not a bank." With respect to operational restrictions, Section 4(a)(2) of the Act, 12 U.S.C. 1843(a)(2), prohibits a bank holding company from "engag[ing] in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under [the Act] * * *, and (B) those permitted under [Section 4(c)(8) of the Act, 12 U.S C. 1843(c)(8)]."

Section 4(c)(8) of the Act, 12 U.S.C. 1843(c)(8), provides that the "nonbanking" restrictions imposed in Section 4(a) "shall not, with respect to any * * * bank holding company, apply to * * * any company the activities of which the Board * * * has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto * * *." Section 4(c)(8), however, expressly provides that "for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker," subject to certain exceptions not relevant here. 12 U.S.C. 1843(c)(8).

2. In July 1986, respondent Merchants National Corporation, a bank holding company headquartered in Indianapolis, sought the Board's permission to acquire two

Indiana-chartered banks, the Mid State Bank of Hendricks County and the Anderson Banking Company. Pet. App. 53a. Each of those state banks engaged in insurance agency activities permitted under Indiana law. See Ind. Code Ann. § 28-1-11-2 (Burns 1986).[1] Petitioners, various insurance industry trade associations, protested Merchants' applications, contending that Merchants' ownership and operation of bank subsidiaries that sold insurance would violate Section 4(c)(8) of the Act, 12 U.S.C. 1843(c)(8). In response to those protests, Merchants told the Board that,

> unless it received Board approval in the meantime for the banks to retain their insurance activities, it would cause the banks to divest the insurance agency activities within two years and, in the interim, to refrain from the sale of insurance except for the renewal of existing policies.

Pet. App. 23a-24a. In light of those commitments, the Board approved Merchants' applications to acquire the two state banks in October 1986. *Id.* at 6a-7a, 23a, 68a.

In February 1987, Merchants asked the Board to permit its two Indiana-chartered banks to resume the insurance activities that had been suspended under its acquisition commitments. Pet. App. 54a. Petitioners renewed their protests against such activities. In September 1987, the Board granted Merchants' request. *Id.* at 67a-82a. The Board concluded

> that the direct insurance activities of Anderson and Mid State Banks are not limited by the nonbanking provi-

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[1] Anderson Bank has engaged directly in insurance agency activities since the bank's incorporation in 1916. Mid State Bank acquired an insurance agency in 1985. Pet. App. 22a-23a. As part of the acquisition proposal before the Board, Mid State Bank agreed to "transfer the insurance activities of the subsidiary to the bank itself, which will thereafter conduct the activities directly." *Id.* at 23a n.1.

> sions of section 4 of the [Bank Holding Company] Act * * * [because those provisions] do not apply to limit the *direct* activities of holding company banks * * *.

Id. at 71a.[2] Moreover, in rejecting petitioners' construction of the Act, the Board noted that it "has not * * * since enactment of the Act read [12 U.S.C. 1843(a)(2)] or any other portion of the nonbanking prohibitions of section 4 as applying to the direct activities of holding company banks." Pet. App. 73a. And the Board determined that its application of Section 4 was consistent with the legislative history and structure of the Act. *Id.* at 73a-76a. Finally, the Board concluded that the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100-86, Tit. II, §§ 201-205, 101 Stat. 581-585, which prohibited federal banking agencies from approving certain nonbanking activities for a period of one year, did not preclude its order. Pet. App. 79a-81a.

On the insurance industry trade associations' petition for review, the court of appeals in January 1988 granted the petition and vacated the Board's order. Pet. App. 47a-63a. The court held that the CEBA moratorium, which ran from March 6, 1987, until March 1, 1988, barred the Board's order. *Id.* at 55a-62a.[3] Accordingly, the court vacated the Board's order and remanded the case for further proceedings. Given that disposition, the court found "it [was] both unnecessary and inappropriate * * * to review that por-

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[2] The Board rejected Merchants' alternative contention that relief should be granted under the grandfather provision of Section 4(c)(8)(D) of the Act, 12 U.S.C. 1843(c)(8)(D), which generally permitted a bank holding company to engage in any insurance activity in which the bank holding company or subsidiary was engaged in on May 1, 1982. The Board found that Anderson Bank was not a subsidiary of a bank holding company on that date and that Mid State Bank did not begin selling insurance before that date. Pet. App. 70a-71a.

[3] The CEBA moratorium expired on March 1, 1988, without renewal.

tion of the Board's order that concerns the scope of the nonbanking prohibitions of section 4 of the Bank Holding Company Act." *Id.* at 63a.

3. In light of the scheduled expiration of the CEBA moratorium, Merchants again asked the Board to permit its two Indiana-chartered banks to resume the insurance activities that had been suspended under its acquisition commitments. As a result, petitioners renewed their protests. In March 1989, the Board reaffirmed its earlier order granting Merchants' request. Pet. App. 22a-45a.[4]

In concluding that "the nonbanking provisions of section 4 do not limit the *direct* activities of holding company banks," Pet. App. 27a-28a, the Board first considered the express terms and structure of the Bank Holding Company Act. The Board noted that "[t]he language of the activities limitation in section 4(a)(2) forbids 'bank holding companies'—not 'banks'—from engaging in activities other than those specified in that provision." Pet. App. 30a. The Board pointed out that the Act

> defines "bank holding company" to mean any company that has control over any bank, a definition that clearly refers only to the parent holding company itself, not to the system as a whole or to any "subsidiary," a term that is separately defined.

Ibid. (footnotes omitted).

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[4] The Board again rejected Merchants' alternative contention that relief should be granted under the grandfather provision of Section 4(c)(8)(D) of the Act, 12 U.S.C. 1843(c)(8)(D). Pet. App. 26a-27a; see note 2, *supra*. The court of appeals did not disturb that aspect of the Board's order, see Pet. App. 9a n.3. That contention is no longer at issue.

The Board also rejected petitioners' request to grant discovery rights and conduct a hearing on Merchants' application. Pet. App. 44a. Petitioners sought no further review of that aspect of the Board's order.

Moreover, the Board determined that

> [t]he structure of the * * * Act indicates that this provision of section 4(a)(2) * * * was intended to apply to the activities of bank holding companies themselves, many of which are operating companies engaged directly in nonbanking activities as well as in controlling banks and companies engaged in permissible nonbanking activities.

Pet. App. 30a. In this regard, the Board noted that Section 4(a) "distinguishes between a bank holding company's acquiring and retaining 'direct or indirect' ownership or control of any company that is not a bank, on the one hand, and the holding company's engaging in activities itself, on the other." Pet. App. 31a. By contrast, the Board observed, "[i]n the activities limitation of section 4(a)(2), * * * Congress did not use the words 'directly or indirectly' to modify the word 'engage.' " *Ibid.* The Board thus concluded that this difference confirms "Congress' intent to apply the activities limitation in section 4(a)(2) to the holding company only and not to its subsidiaries." *Ibid.*

Second, the Board stated that "[s]ince enactment of the [Bank Holding Company] Act, [it] has not read the nonbanking prohibitions of section 4 as applying to the direct activities of holding company banks." Pet. App. 33a. To the contrary, the Board reiterated that its "actions and regulations over the years have consistently interpreted section 4 as *not* applying to such bank activities." *Ibid.*

Third, the Board determined that its "reading of the scope of the section 4(a) prohibitions is fully consistent with the Act's legislative history." Pet. App. 35a. In this regard, the Board noted that the "1970 amendment to section 4(c)(8) reinforced the view that section 4 does not reach the direct activities of banks controlled by holding companies," *ibid.*, and that there was "no indication that when in 1982 Con-

gress incorporated the general prohibition on approving insurance activities into section 4(c)(8), Congress meant to expand the general nonbanking prohibitions in section 4(a)," *id.* at 36a.[5]

4. In November 1989, the court of appeals denied the insurance industry trade associations' petition for review. Pet. App. 1a-19a. In light of petitioners' challenge to the Board's construction of Section 4 of the Bank Holding Company Act, 12 U.S.C. 1843, the court stated that its

> task is to determine whether Congress has "directly spoken to the precise question at issue," and, if so, to give effect to any "unambiguously expressed intent of Congress," or, if not, to determine "whether the agency's answer is based on a permissible construction of the statute."

Pet. App. 11a (quoting *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984)). Turning first to the terms of the statute, the court "[could] not say that the provisions of the Act reveal an unambiguous congressional intent concerning the precise question at issue." Pet. App. 11a. Consequently, the court considered

> whether the Board's interpretation of the language that does appear in the Act is reasonable, an inquiry we

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[5] The Board noted that Congress had recently considered, but did not enact, various bills

> that would have applied the insurance prohibitions of [Section 4(c)(8)] to the activities of holding company banks except where the bank was located in the same state as the bank holding company, the insurance activities were permissible under state law, and sales were limited to within the state.

Pet. App. 43a. The Board therefore "call[ed] to Merchants's [*sic*] attention * * * that subsequent Congressional action may modify the Board's Order granting Merchants's [*sic*] request for relief without providing so-called grandfather rights to continue the insurance activities." *Id.* at 44a.

> undertake by examining all relevant sources, including such clues as the statutory language may provide.

Id. at 12a.

The court found unpersuasive the Board's textual arguments that "the limitations of section 4(a)(2) apply in terms to 'bank holding companies,' not to 'banks,' " Pet. App. 12a, and that "because the 'ownership clause' of section 4(a)(2) does not bar a bank holding company from owning subsidiary banks, the 'activities clause' should be interpreted not to apply to activities of subsidiary banks," *ibid.* Similarly, the court found wanting petitioners' assumption that the statutory bar against bank holding companies from engaging in nonbank activities "means 'engage in directly or through subsidiaries.' " *Ibid.*

On the other hand, the court found "[s]omewhat more supportive of the Board's position * * * textual arguments arising from comparisons of the 'activities clause' with other language in section 4(a)(2)." Pet. App. 12a. First, the court noted that Section 4(a)(2)'s "grandfather proviso" uses the phrase "in which directly or through a subsidiary," and that the "ownership clause" speaks of "direct or indirect" ownership of nonbanks, and "no similar phrase modifies the prohibition on engaging in nonbank activities." *Id.* at 12a-13a. The court thus observed that "[t]he use of these phrases in section 4(a)(2) and their absence from the 'activities clause' might imply a deliberate congressional choice not to restrict the activities of bank subsidiaries * * *." *Id.* at 13a.[6]

The court also determined that the "Board derives a somewhat stronger argument for its interpretation from the

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[6] The court went on to note, however, that those differences in language "might also result from drafting different clauses at different times and assembling them without intending differences in phrasing to have significance." Pet. App. 13a.

structure of the Act." Pet. App. 13a. The court took account of the Board's conclusion

> that if the "activities clause" applied to subsidiaries of a bank holding company, the "ownership clause" would be virtually superfluous, since, under that reading, the "activities clause" alone would preclude a bank holding company from owning a nonbank.

Ibid. On the other hand, the court noted that petitioners found "support for [their] interpretation in the structure of section 4 * * * [in that] subsidiary banks [may be] subject to the 'activities clause' because they are within the category of entities exempted from that clause by section 4(c)(8)." *Id.* at 14a.[7]

Turning to the legislative history of the Act, the court stated that various remarks in the *Congressional Record* "do not provide unambiguous support for [petitioners'] interpretation." Pet. App. 16a. The court also found that the legislative history as a whole was "remarkably free of clear statements indicating disapproval of nonbanking activities engaged in directly by bank subsidiaries." *Ibid.* Indeed, the court pointed out that during the relevant committee hearings, "the attention of Congress was specifically called to the range of activities that state chartering authorities were permitting for bank subsidiaries of bank holding companies, * * * and some Congressmen expressed the view that the

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[7] The court appeared to take issue with

> the Board's contention that though it has no authority to preclude bank subsidiaries of a bank holding company from engaging in nonbank activities, it does have authority to preclude the subsidiaries of a bank subsidiary from engaging in nonbank activities.

Pet. App. 14a. Nonetheless, since this case did not involve such "subsidiaries of a bank subsidiary," the court chose "not to resolve the issue of the Board's authority over the nonbank activities of subsidiaries of bank subsidiaries until that issue is squarely presented." *Id.* at 15a.

holding company bill would not modify such state regulatory authority." *Id.* at 16a-17a.[8]

"After assessing all of the relevant considerations," the court concluded, it was

> satisfied that the Board, acting within its sphere of competence, has made a reasonable interpretation of section 4(a)(2), one that confides decisions concerning the scope of insurance and other nonbank activities of bank subsidiaries to their national and state chartering authorities.

Pet. App. 19a.[9]

ARGUMENT

1. Petitioners contend (Pet. 12-15) that the court of appeals' decision misapplied the principles of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), requiring courts to defer to an agency's reasonable interpretation of a statute Congress has entrusted it to administer. In particular, petitioners claim that the court of appeals erroneously upheld the Board's order "[w]ithout study of the express statutory language and congressional purpose." Pet. 13.

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[8] The court also observed that "[s]ubsequent legislative forays into the field, though an uncertain source of prior congressional intent at best, * * * reveal primarily that Congress finds this is a difficult area in which to provide clear answers." Pet. App. 17a.

[9] The court recognized that "[i]f that interpretation is to be altered, Congress will have to enact suitable legislation." Pet. App. 19a.

The court of appeals dissolved the previously imposed stay pending appeal once it denied the petition for rehearing. Pet. App. 46a. On February 2, 1990, Justice Stevens, sitting as Circuit Justice, denied petitioners' application to stay the court of appeals' mandate pending the filing and disposition of the petition for a writ of certiorari. See Pet. 6 n.3.

The court of appeals, however, did not depart from the established *Chevron* framework. As this Court has made clear, the first stage of the *Chevron* framework requires a reviewing court to determine "whether Congress has directly spoken to the precise question at issue." *Chevron*, 467 U.S. at 842. This question must be answered by "employing traditional tools of statutory construction." *Id.* at 843 n.9; see *Fort Stewart Schools* v. *FLRA*, 110 S. Ct. 2043, 2046 (1990). Here, the court of appeals "look[ed] to the particular statutory language at issue as well as the language and design of the statute as a whole." *K Mart Corp.* v. *Cartier, Inc.*, 486 U.S. 281, 291 (1988). First, the court considered various provisions of the Bank Holding Company Act and found that none "reveal[ed] an unambiguous congressional intent concerning the precise question at issue." Pet. App. 11a; see *id.* at 12a-13a. Second, the court looked to the "structure" of the Act and again determined that it alone did not resolve the issue. *Id.* at 13a-15a. Third, the court reviewed the pertinent legislative history of the Act, together with "[s]ubsequent legislative forays into the field," *id.* at 17a, and concluded that such materials did not clarify the otherwise ambiguous statutory language. *Id.* at 16a-19a.

The court of appeals therefore determined that "Congress has [not] directly spoken to the precise question at issue," *Chevron*, 467 U.S. at 842, only after analyzing the Act's language, structure, and legislative history. Having done so, the court properly proceeded to the second stage of the *Chevron* framework – determining whether the agency has adopted a reasonable interpretation of an otherwise ambiguous statute. See Pet. App. 12a ("The question * * * is whether the Board's interpretation of the language that does appear in the Act is reasonable.").[10] Here, the court again

[10] Petitioners' criticism of the court of appeals' application of the *Chevron* framework is nothing more than a dispute about the organiza-

considered the Act's language, structure, and legislative history and concluded that "the Board, acting within its sphere of competence, has made a reasonable interpretation of section 4(a)(2) [of the Act]." *Id.* at 19a. Accordingly, the court of appeals' unexceptionable application of the *Chevron* framework warrants no further review.[11]

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tion, rather than the analysis, of the court's opinion. Early in its opinion, before recounting an analysis of the Act's terms, structure, and legislative history, the court did state that "[t]he question for us is whether the Board's interpretation of the language that does appear in the Act is reasonable." Pet. App. 12a. Petitioner thus asserts that the court erred in "mov[ing] hastily to step two [of the *Chevron* framework]." Pet. 13. But the court's opinion, when read in its entirety, shows that the court carefully considered the Act's language, structure, and legislative history before concluding that the statute was sufficiently ambiguous to warrant proceeding to determine whether the Board's construction was a permissible reading of the statute.

[11] Contrary to petitioners' submission, there does not appear to be any "wide-spread difficulty in the lower courts" concerning application of the *Chevron* framework. Pet. 14. In each of the decisions petitioners cite, the court proceeded to consider the reasonableness of the agency's construction of the statute only after determining, by traditional methodologies, that the pertinent statutory provision was sufficiently ambiguous. See *Lile* v. *University of Iowa Hosps. & Clinics*, 886 F.2d 157, 160 (8th Cir. 1989) (court determines that the term "governmental program" was "open to debate"); *National Ass'n of Casualty & Surety Agents* v. *Board of Governors*, 856 F.2d 282, 289 (D.C. Cir. 1988) (court concludes that "nothing in either the language or structure of the statute, or in the legislative history, conclusively resolves this dispute"), cert. denied, 109 S. Ct. 2430 (1989); *Securities Indus. Ass'n* v. *Board of Governors*, 807 F.2d 1052, 1056 (D.C. Cir. 1986) (court notes that agency "has comprehensively addressed the language, history, and purposes of the Act" and determines that "Congress has not clearly addressed the question [at issue]"), cert. denied, 483 U.S. 1005 (1987); *Verna* v. *Coler*, 710 F. Supp. 1339, 1341 n.2 (S.D. Fla. 1989) (upon review of language, legislative history, and purposes of Food Stamp Act, court was not "convinced that the term 'head of household' has a plain meaning"), aff'd per curiam, 893 F.2d 1238 (11th Cir. 1990).

2. Petitioners also renew their contention (Pet. 15-18) that Section 4(c)(8) of the Act, 12 U.S.C. 1843(c)(8), restricts bank subsidiaries of a bank holding company from selling insurance. By its terms, however, Section 4(a) of the Act, 12 U.S.C. 1843(a), speaks to a *bank holding company*'s ownership and control of *nonbanking* subsidiaries and *its* engagement in activities other than owning and managing banks. See p. 2, *supra*.[12] In other words, Section 4 does not restrict the kinds of *banks* that a bank holding company may own or control. For that reason alone, petitioners' construction of the statute is mistaken.

Moreover, Section 4(c) of the Act, 12 U.S.C. 1843(c), provides exemptions to the ownership and operational prohibitions otherwise contained in Section 4(a). The insurance restrictions in Section 4(c)(8), contrary to petitioners' submission, are not independent prohibitions on bank holding company activities. Those restrictions are only limitations on the exemption provided in Section 4(c)(8), namely, limitations on the Board's authority to expand bank holding company activity in areas "closely related to banking or managing or controlling banks." Section 4(c)(8) of the Act, 12

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[12] The operational restrictions set forth in Section 4(a)(2) of the Act, 12 U.S.C. 1843(a)(2), refer only to any "bank holding company"—not to any "bank." The Act defines the term "bank holding company" as a company that has control of any bank. 12 U.S.C. 1841(a)(1). This definition denotes the parent company itself, as opposed to the holding company system as a whole. Accordingly, petitioners err in reading Section 4(a)(2)'s operational restrictions as applying not only to activities conducted directly by the parent bank holding company, but also to activities conducted indirectly by any subsidiary of that bank holding company. Moreover, petitioners' construction would make the ownership restrictions in Section 4(a)(1) and (2) superfluous. If a bank holding company were deemed to be engaged in each activity conducted by its subsidiaries, the ownership restrictions would be unnecessary because the subsidiaries' activities would also be subject to the operational restrictions in Section 4(a)(2).

U.S.C. 1843(c)(8). In other words, the ownership and operational prohibitions in Section 4(a), and the exemptions to those prohibitions in Section 4(c), limit the types of subsidiaries that bank holding companies may control to banks and authorized nonbanks.[13] Since Section 4(c)(8) cannot bear the weight petitioners would place on that provision, the court of appeals correctly rejected their construction of the Act.

3. Finally, petitioners (Pet. 8-12) and their amicus (Br. 3-11) overstate the practical significance of the court of appeals' decision. The decision means only that banks owned by bank holding companies may continue to provide services authorized by the chartering authority—an activity that many banks have engaged in since long before the enactment of the Bank Holding Company Act.[14] The ability

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[13] Petitioners' reliance on the "acknowledged purpose of Section 4," Pet. 16, the separation of banking and nonbanking businesses, is misplaced. In *Board of Governors* v. *Dimension Fin. Corp.*, 474 U.S. 361, 374 (1986), the Court eschewed such an approach to statutory interpretation, recognizing that "[i]nvocation of the 'plain purpose' of legislation at the expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of congressional intent."

Contrary to petitioners' assertion (Pet. 17-18), the Board has consistently held that the prohibitions in Section 4(a) do not apply to activities conducted directly by banks owned by bank holding companies. And petitioners err in suggesting that the Board's decision in *Citicorp (South Dakota)*, 71 Fed. Res. Bull. 789 (1985), applied those prohibitions to certain bank holding company banks. There, the Board found that the entity involved, although chartered as a bank, would be operating almost exclusively in nonbanking activity, namely, the insurance business. The Board determined that in those circumstances the entity did not qualify as a "bank" for purposes of the Act. Here, by contrast, there is no dispute that Merchants' subsidiaries, Mid State Bank and Anderson Bank, function primarily as traditional banks.

[14] For example, state-chartered banks in Indiana have provided general insurance services since 1916. See Pet. App. 6a.

of banks to conduct such activities, even if they are not permissible for bank holding companies, has been an accepted part of the regulatory framework since the passage of the Act. Moreover, federal regulatory authorities have ample means to assure that federally insured banks do not engage in nonbanking activities that pose undue risks to the federal insurance fund.[15] See, *e.g.*, 12 U.S.C. 1816 (FDIC may deny deposit insurance if bank's powers are inconsistent with deposit insurance legislation); 12 U.S.C. 1818(a) (FDIC may terminate deposit insurance if bank engages in unsafe or unsound practices); 12 U.S.C. 1818(b) (federal bank regulatory agencies may issue orders to restrain unsafe or unsound practices).[16] In these circumstances, and in light of the absence of any conflict in the lower courts over the question presented, further review by this Court is unwarranted.

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[15] For example, the FDIC has recently announced that it is considering imposition of limitations on insurance and real estate activities authorized for Delaware-chartered banks under a new state law. See Wall St. J., June 13, 1990, at A2, cols. 3-4 (eastern ed.).

[16] The concern that the court of appeals' decision will invite abusive anticompetitive "tying" of various services offered by banks is particularly out of place. See Pet. 10-11; Amicus Br. 5-10. Congress has already explicitly prohibited such practices. See 12 U.S.C. 1971 *et seq.*

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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